



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

X

In the Matter of the Application of DANIEL MOLONEY,  
TEMPEST REALTY CORP., LIFFEY VAN LINES, INC.,  
and ROSE REALTY CORP.,

Petitioners,

NOTICE OF  
APPEAL

For a Judgment Pursuant to Article 75 of the  
Civil Practice Law and Rules

Index #103822/05

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

X

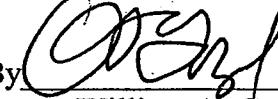
PLEASE TAKE NOTICE, that Petitioner, TEMPEST REALTY CORP. hereby appeals to the Appellate Division: First Department, all adverse portions of the Order/ Decision and Judgment of the Supreme Court: New York County (Kibbie F. Payne), dated May 16, 2006, which was entered in the Clerk's Office on May 31, 2006.

Dated: New York, New York

June 12, 2006

Yours, etc.

AGULNICK & GOGEL, LLC  
Attorneys for Petitioner  
321 Broadway - 2nd Floor  
New York, New York 10007  
(212) 233-9500

By   
William A. Gogel

TO: Agovino & Asselta, LLP  
Attorneys for Respondent  
170 Old Country Road - Suite # 608  
Mineola, New York 11501

jpa\shamrockrose.noe  
ed 6/1/06

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

DANIEL MOLONEY, TEMPEST REALTY CORP.,  
LIFFEY VAN LINES, INC. and  
ROSE REALTY CORP.,

Petitioners,

X  
Index No. 103822/05

NOTICE OF ENTRY

Assigned to:  
Hon. Kibbie F. Payne

For an Order pursuant to Article 75 of the New York  
Civil Practice Law and Rules staying the  
Arbitration of a certain controversy at the  
American Arbitration Association

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

X

SIRS:

PLEASE TAKE NOTICE, that the within is a true copy of an Order and Judgment duly  
entered and filed in the office of the Clerk of the County of New York on or about May 31, 2006.

Dated: Mineola, New York  
June 1, 2006

  
\_\_\_\_\_  
David A. Loglisci, Esq.  
AGOVINO & ASSELTA, LLP  
Attorneys for Respondent,  
Shamrock Building Systems, Inc.  
170 Old Country Road, Suite 608  
Mineola, NY 11501  
(516) 248-9880

TO: AGULNICK & GOGEL, LLP  
Attorneys for Petitioners  
321 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10007  
(212) 233-9500

## SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE  
JusticePART 4Application of  
DANIEL MOLONEY, TEMPEST REALTY, CORP.,  
LIFFEY VAN LINES, INC., and ROSE REALTY CORP.,INDEX NO. 103822/05

Petitioners,

For an Order Pursuant to Article 75 of the New York  
Civil Practice Law and Rules staying Arbitration  
of a certain controversy at the American Arbitration  
Association,MOTION DATE 3/23/06

-against-

MOTION SEQ. NO. 005

SHAMROCK BUILDING SYSTEMS, INC..

MOTION CAL. NO. \_\_\_\_\_

Respondent.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/or \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  NoUpon the foregoing papers, it is ordered that this motion pursuant to CPLR 4403 for a judgment  
modifying the report of a special referee is granted in part, the cross motion for an order confirming the  
report is denied, and the petition for an order permanently staying the arbitration pursuant to CPLR article  
75 is granted in part as indicated in the attached memorandum.

This constitutes the order and judgment of the court.

FILED  
MAY 31 2006  
COURT

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):Dated: MAY 16 2006Check one:  FINAL DISPOSITION      NON-FINAL DISPOSITION

J.S.C.

Check if appropriate:  DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 4

Application of DANIEL MOLONEY, TEMPEST  
REALTY CORP., LIFFEY VAN LINES, INC.,  
and ROSE REALTY CORP.,

Index No. 103822/05

Petitioners,

Motion Seq. 005

JUDGMENT

For an Order Pursuant to Article 75 of  
the New York Civil Practice Law and  
Rules staying Arbitration of a certain  
controversy at the American Arbitration  
Association,

-against-

SHAMROCK BUILDING SYSTEMS, INC..

Respondent.

KIBBIE F. PAYNE, J.:

In this CPLR article 75 proceeding, respondent Shamrock  
Buildings Systems, Inc. (Shamrock) moves pursuant to CPLR 4403  
for a judgment modifying the report of a special referee to  
compel petitioners Tempest Realty, Liffey Van Lines, Inc. and  
Rose Realty Corporation to proceed to arbitration. Petitioners  
cross-move to confirm the report. For the reasons stated below,  
this court grants Shamrock's motion to a limited extent, denies  
the cross-motion and denies in part the petition to stay  
arbitration.

Moloney is the president of Tempest Realty, Liffey Van Lines  
and Rose Realty. Tempest Realty has no employees, and Rose  
Realty has three employees, including Moloney and his wife. In

005

That portion of the referee's report which determined that some of the work performed by Shamrock "was not done under the Agreement" and otherwise purported to determine the merits of the underlying dispute is struck as outside the scope of the reference and within the province of the arbitral tribunal.

Accordingly, it is

ORDERED that respondent's motion pursuant to CPLR 4403 to modify the referee's report is granted to the extent indicated above; and it is further

ORDERED that petitioners cross-motion pursuant to CPLR 4403 to confirm the referee's report is denied; and it is further

ORDERED that petitioners' underlying motion for a stay of arbitration pursuant to CPLR article 75 is granted to the extent that the arbitration is permanently stayed as to Daniel Moloney in his individual capacity and Liffey Van Lines, and the motion is otherwise denied; it is further

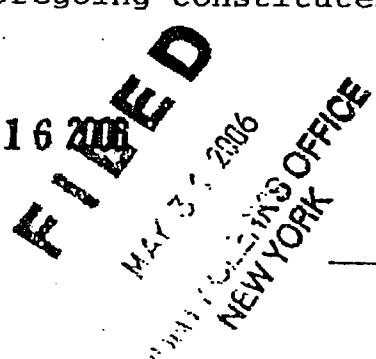
ORDERED that petitioners Rose Realty and Tempest Realty proceed to arbitration with Shamrock; and it is further

ORDERED that petitioner shall serve a copy of this judgment with notice of entry on the arbitral tribunal within 20 days of its entry.

The foregoing constitutes the decision and judgment of the court.

DATE: MAY 16 2006

Kibbie F. Payne, J.S.C.



*(Signature)*  
7 *Yolmar Soalima*  
CLERK

**Index No. 103822/2005**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**Application of**

**DANIEL MOLONEY, TEMPEST REALTY CORP.,  
LIFFEY VAN LINES, INC. and ROSE REALTY CORP..**

**Petitioners,**

**For an Order Pursuant to Article 75 of the New York  
Civil Practice Law and Rules staying Arbitration of a  
certain controversy at the American Arbitration  
Association,**

**-against-**

**SHAMROCK BUILDING SYSTEMS, INC.,**

**Respondent.**

**JUDGMENT**

**AGOVINO & ASSELTA**

**Attorneys for**

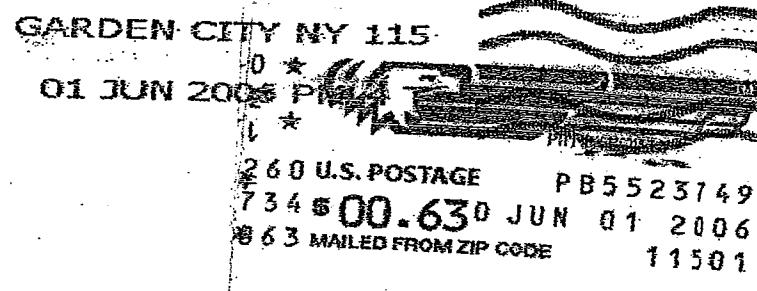
**170 OLD COUNTRY ROAD, SUITE 608  
MINEOLA, NEW YORK 11501  
(516) 248-9880**

**FILED**

**MAY 31 2005**

**AT 10:12A M  
N.Y. CO. CLKS. OFFICE**

IO & ASSELTA, LLP  
COUNTRY ROAD, SUITE 608  
EOLA, NEW YORK 11501



Agulnick & Gogel, LLP  
321 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10007

1000741116

1000741116

Index No 03822/05

Year

RJI No.

Hon.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

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In the Matter of the Application of  
 DANIEL MOLONEY, TEMPEST REALTY CORP., LIFFEY VAN LINES, INC.  
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Petitioners,

For an Order pursuant to Article 75 of the New York Civil Practice Law and Rules staying the Arbitration of a certain controversy at the American Arbitration Association

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

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NOTICE OF ENTRY

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AGOVINO & ASSELTA, LLP

Attorneys for Respondent.

Office and Post Office Address, Telephone  
 170 OLD COUNTRY ROAD, SUITE 608  
 MINEOLA, NEW YORK 11501  
 (516) 248-9880

To

Signature (Rule 130-1.1-a)

.....  
Print name beneath

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....  
Attorney(s) for

Please take notice

 NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
 duly entered in the office of the clerk of the within named court on

 NOTICE OF SETTLEMENT

that an order  
 settlement to the HON.  
 of the within named court, at  
 on

of which the within is a true copy will be presented for  
 one of the judges

at

M

Dated,

Yours, etc.

AGOVINO &amp; ASSELTA, LLP

Attorneys for

To

Office and Post Office Address  
 170 OLD COUNTRY ROAD, SUITE 608

===== NOTICE OF ENTRY =====  
 PLEASE take notice that the within is a (*certified*)  
 true copy of a  
 duly entered in the office of the clerk of the within  
 named court on

Dated,

Yours, etc.  
**AGULNICK & GOGEL, LLC**  
 Attorneys for

*Office and Post Office Address.*  
 321 BROADWAY, 2ND FLOOR  
 NEW YORK, N.Y. 10007

To

Attorney(s) for

===== NOTICE OF SETTLEMENT =====

PLEASE take notice that an order  
 of which the within is a true copy will be presented  
 for settlement to the Hon.

one of the judges of the within named Court, at

on  
 at  
 Dated,  
 M.

Yours, etc.

**AGULNICK & GOGEL, LLC**  
 Attorneys for

*Office and Post Office Address*  
 321 BROADWAY, 2ND FLOOR  
 NEW YORK, N.Y. 10007

Signature (Rule 4301-1-a)

  
 Print name beneath William A. Gogel

**AGULNICK & GOGEL, LLC**  
 Attorneys for Petitioners

*Office and Post Office Address, Telephone*  
 321 BROADWAY, 2ND FLOOR  
 NEW YORK, N.Y. 10007

212-233-9500  
 FAX (212) 693-1666

To

Attorney(s) for

Service of a copy of the within is hereby admitted.  
 Dated,

To

Attorney(s) for

Attorney(s) for

Index No. 103822/05 Year  
 SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK  
 In the Matter of the Application of DANIEL MOLONEY,  
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NOTICE OF APPEAL